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Attorneys for Defendants

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

DANIELLE PRANGER and GARRETT
HARRIS, individually and on behalf of all
others similarly situated,

Plaintiffs,

v.

OREGON STATE UNIVERSITY, a public
body of the State of Oregon; F. KING
ALEXANDER, in his capacity as member
of the Board of Trustees; MIKE BAILEY,
in his capacity as member of the Board of
Trustees; PATRICIA M. BEDIANT, in her
capacity as member of the Board of
Trustees; RANI BORKAR, in her capacity
as member of the Board of Trustees;
JULIA BRIM-EDWARDS, in her capacity
as member of the Board of Trustees;
DARALD W. CALLAHAN, in his
capacity as member of the Board of
Trustees; MICHELE LONGO EDER, in
her capacity as member of the Board of

Case No. 3:21-cv-00656

NOTICE OF REMOVAL

1- NOTICE OF REMOVAL

Trustees; LAMAR HURD, in his capacity as member of the Board of Trustees; PAUL J. KELLY, JR., in his capacity as member of the Board of Trustees; JULIE MANNING, in her capacity as member of the Board of Trustees; PRESTON PULLIAMS, in his capacity as member of the Board of Trustees; KIRK E. SCHUELER, in his capacity as member of the Board of Trustees; STEPHANIE SMITH, in her capacity as member of the Board of Trustees; and MICHAEL G. THORNE, in his capacity as member of the Board of Trustees;

Defendants.

TO: The Judges and the Clerk of the United States District Court for the District of Oregon:

PLEASE TAKE NOTICE that Defendants Oregon State University, F. King Alexander, Mike Bailey, Patricia M. Bedient, Rani Borkar, Julia Brim-Edwards, Darald W. Callahan, Michele Longo Eder, Lamar Hurd, Paul J. Kelly, Jr., Julie Manning, Preston Pulliams, Kirk E. Schueler, Stephanie Smith, and Michael G. Thorne ("Defendants"), hereby remove the above-entitled action to this Court from the Circuit Court of the State of Oregon for the County of Multnomah, pursuant to 28 U.S.C. § 1446. This Court has subject-matter jurisdiction over the action under 28 U.S.C. § 1331 and 28 U.S.C. §1367. The removal is based on the following grounds:

STATE COURT ACTION

Procedural Background

1. On or about March 5, 2021, Plaintiffs commenced the above-entitled civil action against Defendants in the Circuit Court of the State of Oregon for the County of Multnomah by filing a Complaint entitled, *Danielle Pranger, et al. v. Oregon State University, et al.*, Case No. 21CV08719.

2- NOTICE OF REMOVAL

2. Defendants accepted service of the Complaint on April 1, 2021. Pursuant to the provisions of 28 U.S.C. § 1446(a), a true and correct copy of all process, pleadings, and orders served upon Defendant are attached as Exhibit A.

3. Defendants have not filed any responsive pleadings in the state court action.

Summary of Allegations

4. Defendant Oregon State University is a state educational institution, with campuses in Oregon. (Compl. ¶ 19.) Defendants F. King Alexander, Mike Bailey, Patricia M. Bedient, Rani Borkar, Julia Brim-Edwards, Darald W. Callahan, Michele Longo Eder, Lamar Hurd, Paul J. Kelly, Jr., Julie Manning, Preston Pulliams, Kirk E. Schueler, Stephanie Smith, and Michael G. Thorne are members of the Board of Trustees of Oregon State University (the “Trustee Defendants”). (Compl. ¶ 20.)

5. Plaintiffs are individuals who attended Oregon State University as students during the winter, spring, and fall, 2020 academic quarters. (Compl. ¶¶ 9-11.)

6. In the Complaint, Plaintiffs assert various state and federal claims against Defendants, on behalf of Plaintiffs and a putative class of “people paying Oregon State University in whole or in part, personally and/or on behalf of others, for tuition, and/or fees for in-person instruction and use of campus facilities, but who were denied use of and/or access to in-person instruction and/or campus facilities by Defendants for the Winter Quarter 2020 or any subsequent term.” (Compl. ¶ 100.)

7. In broad terms, Plaintiffs allege in their Complaint that Defendants violated the law by not providing students with refunds after COVID-19 caused Oregon State University to shift to a remote-learning environment. (Compl. ¶¶ 1-8.)

8. The Complaint asserts six claims for relief against Defendants: (1) breach of express contract against Oregon State University (Compl. ¶¶ 113-25); (2) breach of implied contract against Oregon State University (Compl. ¶¶ 126-36); (3) unjust enrichment against all

3- NOTICE OF REMOVAL

Defendants (Compl. ¶¶ 137-48); (4) violation of the federal Takings Clause against the Trustee Defendants (Compl. ¶¶ 149-57); (5) inverse condemnation under the Oregon Constitution against Oregon State University (Compl. ¶¶ 158-67); and (6) violation of due process under the United States and Oregon Constitutions against all Defendants (Compl. ¶¶ 168-77).

GROUND FOR REMOVAL

9. This Court has jurisdiction over Plaintiffs' Fourth and Sixth Causes of Action under 28 U.S.C. § 1331. Under that statute, this Court has "original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." Because Plaintiffs' Fourth and Sixth Causes of Action (violation of the Takings Clause and due process) arise under the United States Constitution, this Court has jurisdiction pursuant to 28 U.S.C. § 1331.

10. This Court has jurisdiction over Plaintiffs' remaining claims under 28 U.S.C. § 1367. Under that statute, because this Court has jurisdiction over Plaintiffs' federal claims, it also has supplemental jurisdiction over the remaining state-law claims, so long as those claims "are so related to [the federal claims] that they form part of the same case or controversy." 28 U.S.C. § 1367(a). That occurs when, among other things, "[t]he federal and state claims arise out [of] a common nucleus of operative facts." *Allen v. U.S. Bancorp*, 264 F. Supp. 2d 945, 950 (D. Or. 2003). Here, all of Plaintiffs' claims seek a remedy for alleged damages resulting from Oregon State University's need to transition to a remote-learning environment, because of COVID-19. Accordingly, because Plaintiffs' federal and state claims arise out of the same factual nucleus, this Court has jurisdiction over all of them.

11. Based on the foregoing, this Court has original jurisdiction over the subject matter of this action under 28 U.S.C. § 1331 and 28 U.S.C. § 1367.

ACTION REMOVABLE

12. This action is removable to this Court under 28 U.S.C. § 1441, because this Court would have had original jurisdiction over Plaintiffs' claims had Plaintiffs elected to file the action initially in federal court.

13. Because Plaintiffs filed their Complaint in the Multnomah County Circuit Court of Oregon, which is where the suit currently is pending, this District is the proper venue for this action upon removal, pursuant to 28 U.S.C. § 1441(a). The Portland Division is the proper intra-district assignment for this action upon removal, because it is the division that embraces the county where the state court action was pending. 28 U.S.C. § 1446(a); LR 3-2.

14. As required by 28 U.S.C. § 1446(d), Defendants will promptly give written notice of the filing to Plaintiffs and file a copy of the Notice with the Clerk of the Multnomah County Circuit Court of Oregon. Additionally, Defendants will promptly serve Plaintiffs with the civil case assignment sheet and scheduling order once those documents are issued by this Court.

15. This notice is signed pursuant to Federal Rule of Civil Procedure 11.

16. By this Notice of Removal, Defendants do not waive any objections they may have as to jurisdiction, venue, or forum, or any other defenses or objections they may have to this action, and intend no admission of fact, law, or liability by this Notice and expressly reserve all defenses, objections, and arguments available to them.

13. This Notice of Removal is filed within 30 days of receipt of the Complaint by Defendants in this action, as required by 28 U.S.C. § 1446(b).

WHEREFORE, Defendants hereby file this Notice of Removal pursuant to 28 U.S.C. §§ 1441 and 1446 and request that this Court proceed to hear and determine the matters in this controversy.

DATED: April 30, 2021

PERKINS COIE LLP

By: /s/ Sarah J. Crooks

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Attorneys for Defendants

6- NOTICE OF REMOVAL

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing **NOTICE OF REMOVAL** on the following:

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Attorneys for Plaintiffs, individually and on
behalf of all others similarly situated

to be sent by the following indicated method or methods, on the date set forth below:

- ☐ by sending via the court's electronic filing system
☐ by email
☒ by mail
☐ by hand delivery

DATED: April 30, 2021

PERKINS COIE LLP

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2- CERTIFICATE OF SERVICE

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